



Congress of the United States
House of Representatives
Washington, DC 20515

September 23, 2005

The Honorable Elaine Chao
Secretary
The U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Secretary Chao:

We are writing to express staunch opposition to your waiver of affirmative action requirements for federal contractors in charge of recovery and reconstruction work in the Katrina-ravaged states. This exemption was announced on September 9, 2005, in a memorandum by Deputy Assistant Secretary Charles E. James of the Employment Standards Administration (ESA) to all contracting agencies of the federal government. We call for immediate reinstatement of all equal employment opportunity clause provisions in Katrina-related federal contracts.

On its face, the ESA memorandum exempted all federal contracting agencies from certain affirmative action planning, reporting, and notice requirements imposed by Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 793); and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. § 4212). The memo also asserts that this exemption is limited to Hurricane Katrina relief work for a three month-period.

As you are aware, Executive Order 11246 requires federal contractors to take affirmative action with respect to the employment of (1) racial and ethnic minorities, (2) women, and (3) religious adherents. The above-mentioned laws require federal contractors to affirmatively advance the employment of (4) persons with disabilities and (5) veterans with disabilities or without them.

We asked attorneys at the American Law Division of the Congressional Research Service (CRS) to review the ESA memorandum and analyze its potential effects. According to CRS, the ESA memorandum could amount to an exemption of **indefinite duration** that applies to a **range of contracting opportunities**, which are neither defined nor limited in any explicit terms. Not only is this totally unacceptable, it clearly implies that Hurricane Katrina is being used as an excuse to weaken important, federally-mandated affirmative action practices.

Claims that the ESA waiver is simply designed to free contractors temporarily from tedious paperwork requirements is disingenuous in several respects. First, federal contractors already have 120 days to turn in an affirmative action plan (AAP) and an AAP only goes to the government during a compliance review. Second, there is a world of difference between posting a notice that "Equal Opportunity is the Law" and developing a proactive recruitment and hiring program that targets qualified individuals who are members of one or more of the five aforementioned groups. Third, even if the ESA waiver proves to be time-limited, federal contractors will have already hired the lion's share of the Katrina relief workforce by the time it expires. Any reinstatement of affirmative action requirements at that point would become irrelevant.

As countless millions around the world saw in the televised images broadcast from New Orleans, Biloxi, and other Katrina-devastated areas, those suffering the most were low-income Americans of color, women, persons with disabilities and veterans. These victims of Katrina's ferocity are the very same Americans who would benefit the most from proactive affirmative action recruitment and hiring practices.

Exempting federally-funded contractors from certain provisions of the equal opportunity employment clause is both unjust and un-American. It will hurt most the countless thousands of Americans in the gulf coast states who lost everything in the wake of Hurricane Katrina. We urge you to rescind without any delay the Department of Labor's affirmative action waiver.

Sincerely,

 

GEORGE MILLER
Senior Democratic Member
Committee on Education and the Workforce

MAJOR R. OWENS
Senior Democratic Member
Subcommittee on Workforce Protections
Committee on Education and the Workforce

Carolyn McCarthy

Jim Bland

Wm. Lacy Clay

Harold Ford

John Lewis

John F. Tierney

Betty McCollum

Stephane Tubbs Jones

Susan A. Davis

Tommy Thompson

Russ Holt

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Carolyn C. Kaptur

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Donald M. Payne

Elijah E. Cummings

Shirley Jackson Lee

Robert A. Lee

Carine Brown

Sanford Bishop Jr.

Mae Watts

Willie D. Hastings

David Scott

John Longhorn

Ruth Hines

Chaka Galt

Rail M. Hines

Hilda L. Solis

Henry Cuellar

Queen S. Brown

Jim W.

Sam R.

Yan B.

Linda J. Sanchez

Joe B.

Joe E. Swan Lynn C. Woolsey